

Paper No. 10

RFC

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 8/7/00

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re EPP, Inc.

Serial No. 75/235,844

Jim Zeeger for EPP, Inc.

Christine Baker, Trademark Examining Attorney, Law Office 106
(Mary Sparrow, Managing Attorney).

Before Cissel, Hohein and Wendel, Administrative Trademark
Judges.

Opinion by Cissel, Administrative Trademark Judge:

On February 4, 1997, applicant applied to register the
mark shown below

on the Principal Register for what were subsequently identified by amendment as "spikeless golf cleats for golf shoes," in Class 25. The application was based on applicant's claim of use of the mark in interstate commerce in connection with these products since January 28, 1997.

The Examining Attorney refused registration under Section 2(d) of the Lanham Act on the ground that applicant's mark, as applied to spikeless cleats for golf shoes, so resembles the mark "GREENSKEEPER," which is registered¹ for "soles of golf shoes and spikes for the same," in Class 25, that confusion is likely.

Applicant responded to the refusal to register with argument that confusion is not likely. Applicant argued that its mark conveys a different commercial impression because of the design element in it, and the fact that its mark, "GREEN KEEPERS" is plural, whereas "GREENSKEEPER" is singular. Additionally, applicant argued that confusion is not likely because its goods are different from the goods in the cited registration. Applicant submitted a copy of a published article discussing the fact that shoes with conventional golf spikes have recently been banned from many golf courses in the

¹ Reg. No. 864,920 issued on the Principal Register to Genesco, Inc. on Feb. 18, 1969. Combined affidavit under Sections 8 and 15 of the Act received an accepted; renewed. The registration claims use in commerce since October 31, 1965.

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United States. Applicant contended that there could be no likelihood of confusion between its mark and the cited

registered mark because the registered mark is used in connection with "spikes which are for the most part banned or about to be banned," whereas applicant's mark is used on spikeless golf shoe cleats, which are the acceptable alternative to the banned spike cleats. Also attached to applicant's response was a copy of a published test wherein applicant's spikeless cleats were compared to other golf spike alternatives. Applicant argued that this report demonstrated how those who are knowledgeable in the field understand the difference between spikes and spikeless cleats.

The Examining Attorney was not persuaded by applicant's response to the first Office Action, and in the second Office Action, she made the refusal to register final.

Applicant timely filed a Notice of Appeal, and both applicant and the Examining Attorney filed appeal briefs, but applicant did not request an oral hearing before the Board. Accordingly, we have resolved this appeal based on careful consideration of the record and written arguments before us.

In *In re duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), the predecessor of our primary reviewing court listed the principal factors to be considered in determining whether a likelihood of confusion exists. Chief among these factors are the similarity of the marks as to appearance, sound, meaning and commercial impression, and the

commercial relationship between the goods or services in question, including the channels of trade through which the goods or services move and the level of sophistication of the respective purchasers of them.

In the instant case, we find that confusion is likely. Applicant's mark is very similar to the registered mark, and the goods set forth in the application are interchangeable with the goods specified in the cited registration.

Specifically as to the marks, we find that applicant's mark is visually and phonetically similar to the cited registered mark, and that they both create similar commercial impressions. In the application as originally filed, applicant characterized its mark as "GREEN KEEPERS + Design." This is an accurate reflection of the fact that the word portion of the mark, "GREEN KEEPERS," is the dominant portion of the mark, the part even applicant uses to refer to its mark. It is this part of the mark that would be used by purchasers of applicant's goods to call for them or to recommend them to others. This dominant part of applicant's mark is very similar in sound, appearance and commercial impression to the registered mark, "GREENSKEEPER."

The goods specified in the registration are "soles of golf shoes and spikes for the same." The application states applicant's goods as "spikeless golf cleats for golf shoes."

These products are clearly related. As applicant has indicated, spikeless cleats are alternatives to spikes for golf shoes. Like spikes, spikeless cleats are attached to the soles of golf shoes, so in that sense, the goods of applicant are also complementary with the soles for golf shoes listed in the registration.

Plainly, the ordinary consumers who own golf shoes and purchase cleats for them are likely to assume that the use of these similar marks on both spikes and spikeless cleats is an indication that they emanate from a single source.

Accordingly, the refusal to register under Section 2(d) of the Lanham Act is affirmed.

R. F. Cissel

G. D. Hohein

H. R. Wendel
Administrative Trademark Judges,
Trademark Trial & Appeal Board

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